presentment for payment, justified by reasonable business custom,[12] the holder should still not be allowed to recover. Failure by the bank to remit to the holder within a reasonable time was sufficient to indicate that the note had been dishonored,[13] and the holder having failed to give seasonable notice of dishonor,[14] the defendant as a party secondarily liable was thereby discharged, just as if he were the drawer of a check.[15] It is to be hoped that this construction of the Negotiable Instruments Law, desirable as it is from a commercial viewpoint, may find favor with the courts.[16]

THE WRIT OF *NE EXEAT*. — A novel application of the writ of *ne exeat*, which has lately been made by the Court of Chancery of New Jersey, gives proof of an encouraging tendency of courts of equity to extend old remedies to new situations, whenever necessary to prevent a failure of justice. The writ was issued in aid of a decree awarding the custody of a minor child to the mother and ordering her to allow the father to have access to the child at a specified place in New Jersey. *Palmer* v. *Palmer*, 95 Atl. 241 (N. J.).[1]

The writ of *ne exeat*[2] is an equitable remedy in the nature of bail at common law.[3] It is directed to the sheriff, commanding him to commit the party to prison until he gives security not to leave the jurisdiction without permission of the court.[4] Its prototype appears to have been a writ *de securitate invenienda*,[5] designed to prevent too close relations between the clerical body of England and the Papal See,[6] by forbidding clergymen to depart from the realm without the King's license. The writ of *ne exeat* was first used in England some time between the reign of John and that of Edward I, as a high prerogative writ, founded on the duty of the subject to defend the King and his realm.[7] In view of the political nature of the original writ, it is quite natural that the courts have been inclined to limit its application as a purely civil remedy.[8] As early as the reign of Queen Elizabeth, how-

[12] Prideaux *v.* Criddle, L. R. 4 Q. B. 455; Heywood *v.* Pickering, L. R. 9 Q. B. 428. See Indig *v.* National City Bank, 80 N. Y. 100, 106.

[13] Bailey *v.* Bodenham, 10 L. T. N. S. 422, 423.

[14] See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, §§ 102, 104.

[15] See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, § 89. Bacigalupo *v.* Parrilli, 112 N. Y. Supp. 1040; Kuflick *v.* Glasser, 114 N. Y. Supp. 870.

[16] The court in the principal case seems to have thought of this interpretation, but did not rely upon it. See 109 N. E. 138, 139.

[1] For a more complete statement of this case, see RECENT CASES, p. 222.

[2] In England, called *ne exeat regno*. See STORY, EQUITY JURISPRUDENCE, 13 ed., § 1465. In the United States, called *ne exeat republica*. See 1 WHITEHOUSE, EQUITY PRACTICE, § 428.

[3] See Haffey *v.* Haffey, 14 Ves. Jr. 261; Mitchell *v.* Bunch, 2 Paige (N. Y.) 606.

[4] For form of writ, see Rice *v.* Hale, 59 Mass. 238, 242; 3 DANIELL, CHAN. PLEAD. AND PRAC., 2328.

[5] For form of this writ see BEAMES, NE EXEAT, Appendix I.

[6] See BEAMES, NE EXEAT, 9, 11; 3 CO. INST., ch. 84, p. 179.

[7] 2 BRITTON, 283; see FITZHERBERT, NATURA BREVIUM, 85.

[8] See Tomlinson *v.* Harrison, 8 Ves. Jr. 32; Whitehouse *v.* Partridge, 3 Swanst. 365, 379; Dick *v.* Swinton, 1 Ves. & Bea. 371, 373.

ever, in some unexplained manner,[9] the practice of using the writ for the enforcement of private rights had become established.[10] In this country it has always been treated, not as a prerogative writ, but as an ordinary process which issues as of right in cases in which it is properly grantable.[11]

But both the English and the American courts have established and adhered to the rule that *ne exeat* will issue only for the enforcement of equitable[12] pecuniary[13] demands, presently payable.[14] To this arbitrary rule two exceptions have been recognized. The writ will be granted, on application of a wife, to prevent the threatened departure of her husband with intent to evade a decree for the payment of alimony.[15] And where the circumstances are such that equity will entertain a bill for an account, the writ is available to keep within the jurisdiction a defendant who admits that a balance on a legal claim is due to the plaintiff, but denies that it is as large as the plaintiff asserts.[16] This latter use of the writ has been explained as a process in aid of the concurrent jurisdiction of courts of equity;[17] and on the same theory a *ne exeat* has been issued in actions for the specific performance of contracts, at the instance of the vendor.[18] The remedy, however, has not been given so broad an application as this explanation would imply, but has been strictly limited to cases where there is a money demand to be enforced in equity. Moreover, its availability has been further impaired in some jurisdictions by decisions to the effect that constitutional or statutory provisions abolishing imprisonment for debt restrict the power to issue a *ne exeat* as it existed at common law;[19] and in many of the code states, the writ has been expressly or impliedly abolished.[20]

---

[9] "How it happened that this great prerogative writ, intended by the laws for great political purposes and the safety of the country, came to be applied between subject and subject, I cannot conjecture." Lord Eldon in Flack *v.* Holm, 1 J. & W. 405, 414.

[10] See STORY, EQUITY JURISPRUDENCE, 13 ed., § 1467.

[11] Lamar *v.* Lamar, 123 Ga. 827, 51 S. E. 763.

[12] Jenkins *v.* Parkinson, 2 Myl. & K. 5; Smedberg *v.* Mark, 6 Johns. Ch. (N. Y.) 138. The use of *ne exeat* was not extended to legal debts by the adoption of the Judicature Act. Drover *v.* Beyer, 13 Ch. Div. 242. Nor by codes which abolish the distinction between actions at law and suits in equity. Bonesteel *v.* Bonesteel, 28 Wis. 245.

[13] Williams *v.* Williams, 3 N. J. Eq. 130; Cowdin *v.* Cram, 3 Edw. Ch. (N. Y.) 231. It has also been held that the demand must be certain in its nature. See Anon., 1 Atk. 521; Rico *v.* Gualtier, 3 Atk. 501; Shearman *v.* Shearman, 3 Bro. Ch. 370.

[14] De Rivafinoli *v.* Corsetti, 4 Paige (N. Y.) 264. See also Seymour *v.* Hazard, 1 Johns. Ch. (N. Y.) 1.

[15] Dawson *v.* Dawson, 7 Ves. Jr. 173; Lamar *v.* Lamar, 123 Ga. 827, 51 S. E. 763. It has been said that this use of the writ arose from compassion and from the fact that the ecclesiastical courts could not take bail. See Anon., 2 Atk. 210; Vandergucht *v.* De Blaquiere, 8 Sim. 315, 322; STORY, EQUITY JURISPRUDENCE, 13 ed., § 1472.

[16] MacDonough *v.* Gaynor, 18 N. J. Eq. 249; Jones *v.* Sampson, 8 Ves. Jr. 593.

[17] See STORY, EQUITY JURISPRUDENCE, 13 ed., § 1473.

[18] Boehm *v.* Wood, Turn. & Russ. 332; Goodwin *v.* Clarke, 2 Dick. 497.

[19] See Adams *v.* Whitcomb, 46 Vt. 708; Malcolm *v.* Andrews, 68 Ill. 100. But, on principle, the arrest of a defendant under a *ne exeat* is not imprisonment for debt. Dean *v.* Smith, 23 Wis. 483; Brown *v.* Haff and Lyon, 5 Paige (N. Y.) 235.

[20] *Ex parte* Harker, 49 Cal. 465; Cable *v.* Alvord, 27 Oh. St. 654. In England, *ne*

This apparent prejudice against a valuable equitable remedy makes especially noteworthy the issuance of the writ of *ne exeat* in the principal case, where no pecuniary demand was involved. The Chancellor held that even though there might be no precedent for this use of the writ,[21] equity would "make a precedent to fit a case, novel in incident, which comes within some head of equity jurisprudence." [22] An injunction would have been inadequate. The court could have enjoined the defendant from taking the child out of the state, and ordered her to give security that she would not leave.[23] But she might disobey the court, and get the child into another state before the decree could be enforced by contempt proceedings. And a court of equity in another state could not secure to the father, *in specie*, his right to have access to the child in New Jersey. A writ of *ne exeat*, on the other hand, would keep the defendant in custody in New Jersey, until she gave security. It would accomplish the result aimed at by an injunction in a more effective manner; and there is no reason, on principle, why it should not be issued in such cases.[24] Where the plaintiff's case is clear, and his remedy at law is inadequate, equity should disregard all arbitrary limitations, and make use of every remedy which it possesses, in order to secure the plaintiff's rights.[25]

ADMISSIBILITY OF HEARSAY EVIDENCE BEFORE AN ADMINISTRATIVE TRIBUNAL. — The rapid development of administrative law, with the consequent delegation of quasi-judicial authority to boards and commissions, raises the question whether such a body is bound by the established rules of judicial procedure or may act in accordance with the principles governing the ordinary transaction of business.[1] Two recent California cases have held it reversible error for the commission to base its findings upon hearsay under a Workmen's Compensation Act permitting the commission to disregard "technical rules of evidence." *Englebretson* v. *Industrial Accident Commission*, 151 Pac. 421; *Employers' Assurance Corporation* v. *Industrial Accident Commission*, 151 Pac. 423. A recent New York case comes to the opposite conclusion.[2]

---

exeat issues only when the case is within the exceptions of the Debtors Act, 1869 (32 & 33 VICT., c. 62), § 6. Drover *v.* Beyer, 13 Ch. Div. 242.

[21] *Cf. In re* J. Watts Kearney, Jr., 21 N. J. L. J. 25.

[22] *Cf.* Earle *v.* American Sugar Refining Co., 74 N. J. Eq. 751, 761, 71 Atl. 391, 395.

[23] De Manneville *v.* De Manneville, 10 Ves. Jr. 52.

[24] In New York a defendant may now be arrested whenever his contemplated departure from the state threatens to render ineffectual any judgment or order requiring the performance of an act, the non-performance of which would be punishable as a contempt. This is a statutory substitute for the writ of *ne exeat*. BLISS, N. Y. ANN. CODE, 6 ed., § 550.

[25] See Chancellor Kent's opinion in Porter *v.* Spencer, 2 Johns. Ch. (N. Y.) 169. *Cf.* also, Fisher *v.* Stone, 4 Ill. 68, 70; Lucas *v.* Hickman, 2 Stewart (Ala.) 111, 114.

[1] See Local Government Board *v.* Arlidge, [1915] A. C. 120, 132, 133. 31 LAW QUART. REV. 148, 150.

[2] For the facts of the cases here discussed, see RECENT CASES, p. 227.